

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAMIEN LAMONT DORRIS,

Defendant-Appellant.

UNPUBLISHED

December 19, 2006

No. 264415

Wayne Circuit Court

LC No. 04-012589-01

Before: Jansen, P.J., and Sawyer and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for first-degree murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to life in prison without parole for the first-degree murder conviction and two years in prison for the felony-firearm conviction. We affirm.

Several eyewitnesses testified at trial that defendant fatally shot Glenn Scott. There was also testimony that defendant used two separate guns and casings from two different caliber weapons, one of which was a nine-millimeter, were found at the scene. Defense counsel consented to the admission of evidence that defendant and Andre Stallworth were arrested together on an unrelated matter and that police recovered a nine millimeter handgun during that arrest, which was later determined not to be connected to the instant offense. Defense counsel objected, however, to any mention that defendant fled from police during that arrest or that a second gun, also not connected to the instant offense, was seized from defendant and Stallworth at that time.

Defendant now argues on appeal that the trial court erred in admitting testimony relating to the nine millimeter weapon recovered during that unrelated arrest. However, defendant's affirmative consent to the admission of this evidence at trial precludes appellate review. *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000); *People v Fetterly*, 229 Mich App 511, 520; 583 NW2d 199 (1998). "A defendant may not waive an objection to an issue before the trial court and then raise it as error' on appeal." *Carter, supra*, quoting *Fetterly, supra*. Stated differently, "One who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights, for his waiver has extinguished any error." *Id.* at 215, quoting *United States v Olano*, 507 US 725, 733; 113 S Ct 1770; 123 L Ed 2d 508 (1993).

Even if not waived, defendant's claim of error lacks merit. We review defendant's unpreserved assertion of evidentiary error for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). To avoid forfeiture: (1) an error must have occurred, (2) the error must be clear or obvious, and (3) the error must have affected the outcome of the trial. *Id.* "Reversal is warranted only when the plain forfeited error resulted in the conviction of an actually innocent defendant or when an error 'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings' independent of the defendant's innocence." *Id.*, quoting *Olano*, *supra* at 736-737.

Michigan Rule of Evidence 404(b) governs the admissibility of evidence of "other crimes, wrongs, or acts." MRE 404(b); *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). "Evidence of extrinsic crimes, wrongs, or acts of an individual generally is inadmissible in a criminal prosecution to prove that the defendant possessed a propensity to commit such acts." *People v Hall*, 433 Mich 573, 579; 447 NW2d 580 (1989). The purpose of this rule is to prevent a conviction based on defendant's history of misconduct, rather than the facts of the instant case. *Starr*, *supra* at 495. However, such evidence is not universally excluded. Rather evidence of extrinsic crimes, wrongs, or acts of the accused is admissible as substantive evidence where there is substantial proof that the accused committed the extrinsic acts, there is some "special quality or circumstance" of the extrinsic acts that tends to prove a fact or issue in dispute (other than the accused's bad character), and the probative value of the evidence is not outweighed by the potential of unfair prejudice to the defendant. *Hall*, *supra* at 579-580.

In the instant case, the trial court determined that evidence of defendant's unrelated arrest was admissible because it was relevant to identification of the perpetrator. Defense counsel repeatedly suggested that Stallworth was the perpetrator of the instant offense. Defense counsel placed a photograph of Stallworth into evidence and showed it to witnesses throughout the trial. There was also evidence that a second nine millimeter weapon, already in police possession, was both used to shoot Scott and was used in a separate offense committed by Stallworth. Thus, evidence regarding the nine millimeter weapon recovered during defendant's unrelated arrest with Stallworth, together with subsequent test results establishing that it was unconnected to the instant offense, was relevant to such an assertion. Further, there is no indication that the admission of evidence that defendant may have possessed a gun during a separate arrest affected the outcome of the trial given that several eyewitnesses to Scott's murder affirmatively identified defendant as the perpetrator.

We affirm.

/s/ Kathleen Jansen
/s/ David H. Sawyer
/s/ Richard A. Bandstra